

\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM (M) 1282/2018**

AVINASH CHOPRA

..... Petitioner

Through: Mr. Abhishek Singh, Advocate.
(M:9910291290)

versus

TAPAN DEB

..... Respondent

Through: Mr. L. S. Solanki, Advocate.
(M:9891597843)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **14.01.2020**

1. The present petition challenges the impugned order dated 7th November, 2017. The only issue in this case is whether the Petitioner/Landlord (*hereinafter*, “*Landlord*”) ought to be given the right to cross-examine the Respondent’s/Plaintiff’s (*hereinafter*, “*Plaintiff*”) witness.
2. The background is that the Plaintiff was a tenant in the *barsati* floor of property bearing No. J-419, New Rajinder Nagar, New Delhi – 110060 (*hereinafter*, “*suit property*”). He filed a suit against the Landlord on the ground that he was wrongly dispossessed from the suit property and that he ought to be reinstated in the suit property. The Landlord, who is a senior citizen, was contesting the suit. The suit was instituted on 25th March, 2013 and issues were framed in the suit on 15th April, 2015. In 2015, the evidence of the Tenant commenced and on a couple of hearings, time was sought by the Tenant and the same was granted subject to costs.
3. On 18th March, 2016, a last and final opportunity was given to the

Landlord to cross-examine the Plaintiff's witness, which was not done. Right to cross-examine the said witness was closed on 13th May, 2016. Thereafter, the counsel for the Landlord has also sought discharge. It is submitted that applications were moved before the Trial Court seeking recall, which were rejected. Hence, the present petition.

4. It is submitted by ld. counsel that the Landlord is a senior citizen and is suffering from severe ailments. His son has also undergone a critical brain surgery and is dependent upon the parents. The Landlord is represented by a legal aid counsel. Under these circumstances, it is submitted on behalf of the Landlord that he was not aware that his counsel was not appearing in the matter and pursuing it diligently.

5. On the other hand, ld. counsel for the Plaintiff submits that the Plaintiff was forcefully dispossessed and the adjudication of the suit is also delayed. It is further submitted that the Landlord and his wife are both facing trial in the criminal proceedings.

6. Considering the overall circumstances, the age of the Landlord and the medical condition of his son, this Court is of the opinion that one last opportunity ought to be granted to the Landlord to cross-examine the Plaintiff and his witness. Moreover, the consequence of not being permitted to cross-examine the Plaintiff and his witness and not being permitted to lead evidence, could be far-reaching for the Landlord. Accordingly, the impugned order dated 7th November, 2017 is set-aside and the Landlord is given one last opportunity to cross-examine the Plaintiff and his witness, on the date fixed by the Trial Court. There are two witnesses on behalf of the Plaintiff i.e., the Plaintiff himself and one other witness. Both the witnesses shall be present on the date fixed before the Trial Court and shall be cross-

examined by the Landlord on two consecutive dates. No further opportunity shall be granted for cross-examination. Thereafter, if the Landlord wishes to lead evidence, he is permitted to do so without seeking any further permission from the Trial Court.

7. Considering that the suit was filed in 2013, the same shall be disposed of expeditiously.

8. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

JANUARY 14, 2020/dk